Supreme Court, U.S.
FILED
JUN 5 1989
JOSEPH F. SPANIOL, JR.
CLERK

Nos. 88-1706 and 88-1874

In the Supreme Court of the United States

OCTOBER TERM, 1988

CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY, ET AL., PETITIONERS

v.

RAILWAY LABOR EXECUTIVES' ASSOCIATION, ET AL.

RAILWAY LABOR EXECUTIVES' ASSOCIATION, ET AL., CROSS-PETITIONERS

v.

CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY, ET AL.

ON PETITION AND CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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1. The Chicago & North Western Transportation Company (C&NW) and the FRVR Corporation (FRVR) are, respectively, the seller and purchaser of a rail line. The Interstate Commerce Commission (ICC) authorized their transaction, pursuant to the Interstate Commerce Act, 49 U.S.C. 10101 *et seq.*, through the ICC's "*Ex parte*

No. 392" procedures.[1] Shortly thereafter, C&NW and FRVR filed a petition with the ICC seeking a declaratory order "clarifying" the ICC's jurisdiction over labor issues arising from the transaction, including whether its authorization of the transaction "displaces" the collective bargaining provisions of the Railway Labor Act, 45 U.S.C. 151 *et seq.*, and the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. 101 *et seq.* (Pet. 3). The Railway Labor Executives' Association (RLEA), which represents various railway labor interests, opposed the petition.

The ICC issued a decision essentially declaring that the Interstate Commerce Act preempts the provisions of the Railway Labor Act and the Norris-LaGuardia Act to the extent necessary to allow the parties to consummate an ICC-authorized transaction. Pet. App. 4a-23a. See *id.* at 14a-17a, 18a. The RLEA then sought judicial review of the ICC's order in the court of appeals pursuant to the Administrative Orders Review Act, 28 U.S.C. 2341 *et seq.* (also known as the Hobbs Act). The United States, which is a statutory respondent in such cases (see 28 U.S.C. 2344, 2348), filed a statement indicating that it neither supported nor opposed the ICC order under review.

The court of appeals held that "it is for this Court, not the Commission, to decide whether the Railway Labor Act and the Norris-LaGuardia Act must be accommodated to the authority of the Commission under

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[1] See *Ex parte No. 392 (Sub. No. 1)—Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1985), aff'd *sub nom. Illinois Commerce Comm'n* v. *ICC*, 817 F.2d 145 (D.C. Cir. 1987).

section 10901 of the Interstate Commerce Act" (Pet. App. 2a-3a). The court explained that it had recently issued a decision holding that "while the Railway Labor Act must be accommodated" to the ICC's authority to impose labor protective conditions, "there is 'no inherent incompatibility' between the recent deregulatory efforts of Congress and the ICC and the continued viability of the Norris-LaGuardia Act" (*id.* at 2a). See *Burlington Northern R.R.* v. *United Transp. Union*, 848 F.2d 856 (8th Cir.), cert. denied, 109 S. Ct. 499 (1988). The court of appeals accordingly affirmed the ICC's decision, but only to the extent that the decision was consistent with the court's prior opinion. See Pet. App. 2a-3a, 24a-25a.

2. C&NW and FRVR petition this Court for a writ of certiorari to review the court of appeals' ruling that the ICC's authorization of a rail line acquisition does not relieve the courts of the provisions of the Norris-LaGuardia Act prohibiting injunctions in cases involving labor disputes. Their petition presents a question that is identical to the question presented in *Pittsburgh & Lake Erie R.R.* v. *Railway Labor Executives' Ass'n*, No. 87-1589 (argued Mar. 29, 1989). We accordingly submit that the petition and RLEA's related cross-petition should be held and disposed of in light of this Court's resolution of *Pittsburgh & Lake Erie R.R.*, *supra*.

Respectfully submitted.

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JUNE 1989

☆ U.S. GOVERNMENT PRINTING OFFICE 1989 – 241 699/00292